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TESTIMONY of Elton B. Harvey, III
Real Property Law Section

SUPPORT

Senate Bill 886 "AN ACT CONCERNING SECURED AND UNSECURED LENDING"

Banking Committee
February 19, 2015

My name is Attorney Elton B. Harvey, III. I am the Chair of the Executive Committee of the Connecticut Bar Association Real Property Section and I am before you today on behalf of the Section and the Connecticut Bar Association to request your support of inclusive language in Senate Bill 886 "An Act Concerning Secured and Unsecured Lending".

The excesses that led to the mortgage crisis of 2007 have resulted in unprecedented oversight of lenders and that has caused those lenders to be extremely cautious before loaning money. While this has generally been a good thing, in the residential financing market this practice has led to unintended consequences at the closings for consumers and their attorneys.

In the extreme this has led to lenders not wiring funds until all the documents are signed, some or all of those signed documents being transmitted by fax or email to the lender, delay while the signed documents are reviewed by the lender's underwriter and then, and only then, are the funds released to be wired to the attorney settlement agent.

Imagine that you are a first time homebuyer. You are at the closing table, excited and a little nervous. Your lawyer announces that despite the fact that all the documents have been signed, you cannot get into your new home because the money has not been wired. Your belongings are on the moving truck, the kids are starting school tomorrow, and you don't have a home.

Bill 886 "An Act Concerning Secured and Unsecured Lending"



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To make matters worse, once the lender makes the decision to release closing funds, the funding process itself can take hours before the funds actually reach the closing attorney's IOLTA account. Remember, a wire initiated on the West Coast at any time after noon local time is at risk of not reaching the closing attorney's account before the end of business. In the interim the closing is in limbo. Funds can not be exchanged and the title to the property isn't transferred. The buyer and seller are stuck. The moving vans remain on hold. The Sellers can't move on and buy their new home. Existing loans can't be paid off. This domino effect can be quite significant, particularly at month end, stopping multiple closings in their tracks.

As attorney settlement agents, we are required to hold the funds for each closing in Interest on Lawyers Trust Accounts (IOLTA) Accounts, and we are bound by our ethical rules not to commingle clients' funds. Accordingly, to comply with her ethical obligations, the prudent attorney has the choice of making the parties wait at the closing table until funds are received and credited to her IOLTA or adjourning the closing until the funds are received and checks can be negotiated from the IOLTA account.

It is the position of the Connecticut Bar Association and its Real Property Section that it is reasonable to require lenders, who are charging interest to their customers from the date and time of closing, to have the money available at the date and time of closing. We do not object to lenders giving us strict instructions not to release the funds until they have reviewed the signed closing documents.



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You may hear arguments that the scrutiny that lenders are under by regulators makes it prudent to hold the wire until signed closing documents have been reviewed. Or that lenders can only guarantee to send the wire but cannot guarantee against delays when the wire is in the Federal system.

The simple fact is that this is a balancing test between the relative harm to lenders to require them to make reasonable accommodation to get the funds into the settlement agents hands at the date and time of closing against the inconvenience and disruption of commerce that occurs when buyers and sellers are left sitting at the closing table waiting on a late-funded wire to hit.

Many lenders, in preparation for the changes anticipated by the Consumer Financial Protection Bureau (CFPB) have already begun vetting their attorney settlement agents to ensure that they only have the best qualified settlement agents closing their loans. The risk that a package may be deficient is smaller when qualified experienced attorney settlement agents are used.

Additionally, as of August 1, 2015, the requirement that all closing figures be in the hands of the consumer three business days in advance of closing, make the argument in favor of timely funding of loans that much more compelling.

We urge the inclusion within Senate Bill 886 of the following language to facilitate smooth closings for Connecticut consumers.



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Payment of first or secondary mortgage loan proceeds by wire transfer.

Time limits.

Any person or entity engaged in the business of (1) making first mortgage loans in this state and licensed in accordance with part I(A) of chapter 668, or (2) making secondary mortgage loans in the state and licensed in accordance with part I(B) of chapter 668, that chooses to utilize a wire transfer to send the loan proceeds to the mortgagee's attorney, shall transfer the loan proceeds to the bank which holds the account of the mortgagee's attorney by a wire transfer in a timely manner, but in any event not later than the scheduled date and time of the closing of the loan, except that in the case of a mortgage refinancing where any right of rescission under 12 CFR 226.23 has terminated, any such wire transfer shall be in a timely manner, but in any event not later than the disbursement date. In the case of a person or entity engaged in the business of making secondary mortgage loans in this state, the provisions of this subsection shall apply only to secondary mortgage loans to finance the acquisition or initial construction of the mortgagor's principal dwelling.

Thank you for your consideration and I would be happy to entertain any questions you may have.